**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

HAROLD TERRELL   **PLAINTIFF**

v.   **CIVIL ACTION NO. 2:17-CV-135-KS-MTP**

FCA US LLC and DANIELLE WATERS   **DEFENDANTS**

ORDER

This matter is before the Court on the Motion for Leave to Conduct Remand Related Discovery ("Motion for Discovery") [7] filed by Defendant FCA US LLC ("FCA"). FCA seeks leave to conduct discovery into Plaintiff Harold Terrell's ("Plaintiff") intent to abandon his claims against Danielle Waters, the non-diverse defendant, in order to show that removal was proper. In support of its removal theory, FCA cites *Ramirez v. Michelin North America, Inc.*, which states that "when a Plaintiff, at whatever time and for whatever reason, indicates a desire to completely abandon the claims against all non-diverse defendants, those defendants are fraudulently joined, and the case becomes removable at that moment." C.A. No. C-07-228, 2007 WL 2126635, at *3 (S.D. Tex. July 19, 2007) (quoting *Franz v. Wyeth*, 431 F.Supp.2d 688, 690 (S.D. Tex. 2004)). However, to demonstrate fraudulent joinder based on voluntary abandonment, FCA must show that Plaintiff made "a definite or unequivocal expression of intent to discontinue the action against the resident party." *Id.* (quoting *Naef v. Masonite Corp.*, 923 F.Supp. 1504, 1510 (S.D. Ala. 1996)). Discovery is not warranted to investigate if Plaintiff had the intent to abandon his claims against Danielle Waters, then, because for FCA's voluntary abandonment theory to apply, Plaintiff must have made his intent known through a "definite or unequivocal expression." The Motion for Discovery [7] will therefore be **denied**.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Discovery [7] is

denied. FCA's Response to Plaintiff's Motion to Remand [4] is due fourteen (14) days from the

date of this order. Plaintiff's Rebuttal is due seven (7) days after receipts of FCA's Response.

SO ORDERED AND ADJUDGED, on this, the 27th day of September, 2017.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE